

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1181 be amended to read as follows:

- 1 Page 3, between lines 32 and 33, begin a new paragraph and
- 2 insert:
- 3 "SECTION 4. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE
- 4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 5 UPON PASSAGE]:
- 6 **Chapter 8.4. Merchant Power Plants**
- 7 **Sec. 1. This chapter does not apply to a merchant power plant**
- 8 **that has filed a petition with the commission under IC 8-1-2.5**
- 9 **before March 1, 2001, seeking an order that the commission**
- 10 **decline to exercise, in whole or in part, its jurisdiction over the**
- 11 **merchant power plant.**
- 12 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
- 13 **means a facility within Indiana used for the:**
- 14 **(1) production, transmission, delivery, or furnishing of heat,**
- 15 **light, or power; and**
- 16 **(2) sale of electric energy exclusively on the wholesale**
- 17 **market;**
- 18 **to other public utilities, energy service providers, or power**
- 19 **marketers within or outside Indiana.**
- 20 **(b) The term includes a facility that has made a significant**
- 21 **alteration to the labor used to construct or remodel the facility. For**
- 22 **purposes of this subsection, a facility makes a significant alteration**
- 23 **in the labor used to construct or remodel a facility if the person**
- 24 **uses contractors, subcontractors, or work crews that include**
- 25 **workers who are not participants in or have not completed a**
- 26 **jointly administered labor and management apprenticeship**
- 27 **program approved by the United States Department of Labor's**
- 28 **Bureau of Apprenticeship Training.**
- 29 **(c) The term does not include a facility that is owned,**
- 30 **controlled, or operated by a person that is obligated contractually**
- 31 **to provide substantially all of the wholesale power requirements of**
- 32 **an electricity supplier under a contract extending at least five (5)**

1 years.

2 Sec. 3. Except as provided in section 1 of this chapter, a
3 merchant power plant is subject to the jurisdiction of the
4 commission.

5 Sec. 4. (a) The commission shall consider the following when
6 acting upon any petition by a merchant power plant under
7 IC 8-1-2.5 or IC 8-1-8.5:

8 (1) Location.

9 (2) Need.

10 (3) Financing.

11 (4) Reporting requirements.

12 (5) Impact on electric, water, and natural gas suppliers and
13 customers.

14 (6) The recommendation of the department of natural
15 resources under section 5 of this chapter.

16 (7) Other factors the commission considers relevant to the
17 petition.

18 (b) The commission shall issue a decision either approving or
19 denying a merchant power plant's petition under IC 8-1-2.5 or
20 IC 8-1-8.5 not later than eighteen (18) months after the date of the
21 petition.

22 Sec. 5. (a) When petitioning the commission under IC 8-1-8.5
23 or IC 8-1-2.5, a merchant power plant must establish proof of
24 financial responsibility by filing one (1) or a combination of the
25 following with the commission:

26 (1) A fully funded trust fund agreement.

27 (2) A surety bond with a standby trust fund agreement.

28 (3) A letter of credit with a standby trust fund agreement.

29 (4) An insurance policy with a standby trust fund agreement.

30 (5) Proof that the merchant power plant meets a financial
31 test established by the commission and equivalent to one (1)
32 of the items in subdivisions (1) through (4).

33 (b) The amount of financial responsibility that a merchant
34 power plant must establish under this section shall be determined
35 by the commission. In all cases, the amount must be sufficient to
36 close the merchant power plant in a manner that:

37 (1) minimizes the need for further maintenance and
38 remediation; and

39 (2) provides reasonable, foreseeable, and necessary
40 maintenance and remediation after closure for at least
41 twenty (20) years after the merchant power plant ceases
42 operations.

43 (c) The commission may use:

44 (1) a trust fund agreement;

45 (2) a surety bond;

46 (3) a letter of credit;

47 (4) an insurance policy; or

48 (5) other proof of financial responsibility;

49 filed under this section for the closure or post-closure monitoring,
50 maintenance, or remediation of a merchant power plant approved
51 by the commission, if the merchant power plant does not comply
52 with closure or post-closure standards established by the

commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

(1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.

(2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

(1) send notice of the petition by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and

(2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

(1) a description of the facility or proposed facility; and

(2) the location, date, and time of the field hearing required by section 5 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 5 of this chapter, a majority of the persons described in section 4(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 9. (a) Not later than thirty (30) days after a hearing is requested under section 6 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

(1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and

(2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

(1) all record owners of property located within one-half (1/2) mile of the proposed facility; and

(2) the merchant power plant.

(c) The parties to the hearing include:

(1) a person entitled to notice under section 7(b)(1) of this

chapter; and

(2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 7 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 11. When considering whether to approve a merchant power plant, the commission shall give preference to the following locations for siting:

(1) Brownfield sites that are isolated from populated areas.

(2) Sites of existing or former utilities that can be replaced or repowered.

(3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

Sec. 12. (a) For purposes of this section:

(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

(1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and

1 the department. The assessment shall be prepared by a licensed
 2 professional geologist (as defined in IC 25-17.6-1-6.5) or an
 3 engineer licensed under IC 25-31-1. The assessment must include
 4 the following information:

- 5 (1) Sources of water supply.
- 6 (2) Total amount of water to be used by the merchant power
 7 plant for each source.
- 8 (3) Location of wells or points of withdrawal.
- 9 (4) Ability of the water resource to meet the needs of the
 10 merchant power plant and other users.
- 11 (5) Probable effects of the merchant power plant's use and
 12 consumption of the water resource on other users.
- 13 (6) Alternative sources of water supply.
- 14 (7) Conservation measures proposed by the merchant power
 15 plant for reducing the plant's effect on the water resource.
- 16 (8) Other information required by any other law, rule, or
 17 regulation.

18 **Sec. 13. Following the approval of a petition by the**
 19 **commission, the merchant power plant shall:**

- 20 (1) notify the commission upon becoming an affiliate of any
 21 regulated Indiana utility selling electricity at retail to
 22 Indiana consumers, at which time the commission may
 23 reassert any jurisdiction it had declined under IC 8-1-2.5;
- 24 (2) obtain prior commission approval with respect to the sale
 25 of any electricity to any affiliated regulated Indiana retail
 26 utility, or any affiliate of a regulated Indiana retail utility;
 27 and
- 28 (3) obtain prior commission approval of any transfers of
 29 ownership of the facility or its assets."

30 Renumber all SECTIONS consecutively.

(Reference is to EHB 1181 as printed April 6, 2001.)

Senator CRAYCRAFT